

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

DAVID ROYSE LADD,

Defendant.

No. 89-CR-83-E

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
JUNE 16, 1992

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON JUNE 16, 1992

REVOCATION OF PROBATION HEARING

BEFORE THE HONORABLE JAMES O. ELLISON, Chief Judge.

APPEARANCES:

For the Plaintiff: Mr. John S. Morgan
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For the Defendant: Mr. John E. Dowdell
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| 13 | June 16, 1992 | |
| 14 | THE COURT: Please be seated. We have this afternoon | |
| 15 | a hearing in Case No. 89-CR-83-05-E, United States of America | |
| 16 | vs. David Royse Ladd. And as I stated this is a hearing for | |
| 17 | revocation of probation. You may proceed. | |
| 18 | MR. MORGAN: Good afternoon, Your Honor. It's a | |
| 19 | pleasure to be here. | |
| 20 | THE COURT: Good afternoon, Mr. Morgan. | |
| 21 | MR. MORGAN: I will introduce Mr. John Dowdell | |
| 22 | representing the defendant. You will recall Mr. Ladd, I | |
| 23 | presume. | |
| 24 | THE COURT: Yes. | |
| 25 | MR. DOWDELL: Your Honor, also with me is Lisa Miller | |

1 who is clerking with my firm during the summer. I would ask
2 permission for her to be seated at counsel table.

3 THE COURT: She is certainly welcome to be seated.

4 MR. DOWDELL: She's at Kansas University between her
5 second and third year and she has assisted me in this case.

6 THE COURT: Very good. We welcome her to the
7 proceedings.

8 MR. DOWDELL: Thank you, Judge.

9 THE COURT: Mr. Morgan.

10 MR. MORGAN: Your Honor, I don't believe there's going
11 to be too much contest as far as the facts are concerned. I
12 have conferred with Mr. Dowdell mostly on the phone concerning
13 the basis for the application.

14 THE COURT: All right.

15 MR. MORGAN: However, I would like to go ahead and
16 call Scott as a witness, let him give the foundation for it for
17 Your Honor to have a basis for the consideration and then yield
18 to Mr. Dowdell who I think has a presentation for you, and if
19 there is a response appropriate I would request permission to
20 make one.

21 THE COURT: Very well, Mr. Morgan, we will proceed in
22 that way.

23 MR. MORGAN: Thank you, Your Honor. I call Mr.
24 Kallenberger at this time. Would this be all right without the
25 podium?

1 THE COURT: That's fine, that's fine. We will just
2 leave the podium out of it.

3 MR. MORGAN: Reminds me of Common Please Court.

4 THE COURT: Right. Judge Leslie Lyle presiding,

5 SCOTT KALLENBERGER

6 Called as a witness on behalf of the plaintiff, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MORGAN:

10 Q. Tell us your name please?

11 A. Scott Kallenberger.

12 Q. What is your business, profession or occupation?

13 A. United States Probation Officer for Northern Ohio --
14 Northern Oklahoma, pardon me. In this case I feel like I am
15 working for Northern Ohio.

16 Q. How long have you been so employed?

17 A. July, 1987.

18 Q. All right. And are you familiar with the United States of
19 America vs. David Royse Ladd, Case No. 89-CR-83?

20 A. I am.

21 Q. Which was assigned to Judge Ellison?

22 A. Yes.

23 Q. And are you familiar with the background and the facts
24 concerning his plea of guilty and the fact that he was placed
25 on a five years probation?

1 A. Yes, I prepared the presentence investigation in the
2 matter and was involved in the transfer of Mr. Ladd to the
3 Northern District of Ohio after he was sentenced to five years
4 probation.

5 Q. I believe the date was the 15th day of May of 1988?

6 A. True.

7 Q. After you had placed him in a probationary status with the
8 State of Ohio did you then continue, withdraw, or was that
9 monitoring done by the United States Probation Office in Ohio.

10 A. Supervision of Mr. Ladd was carried out by the probation
11 office in Cleveland, Ohio.

12 Q. And was that the United States Probation Office?

13 A. Yes.

14 Q. And do you recall the name of the probation officer that
15 was assigned to him?

16 A. Kit Schellenbarger and there was another officer that was
17 involved. I'm not certain, but it's possible there were a
18 number of officers involved in the supervision of Mr. Ladd
19 because they work on a team system. There were two teams,
20 three officers on a team that were specifically involved in the
21 supervision of offenders that had a history of drug abuse and
22 have a condition of drug counseling.

23 Q. Now before going to Ohio was Mr. Ladd required to sign
24 specific rules of probation?

25 A. Yes, Rules and Conditions of Probation.

1 Q. And do you have those in your file?

2 A. I do.

3 Q. And do you have the date that he signed those?

4 A. Exhibit A of the petition, conditions signed May 15, 1990.

5 Q. And was one of those conditions concerning substance abuse
6 or more than one?

7 A. There was a condition that -- well, there is a condition
8 not specific to -- yes, there is, pardon me. There's a
9 condition that the defendant shall not use or be in possession
10 of any narcotic drugs. Further there was a condition that he
11 submit to urine testing and participate in drug treatment.

12 Q. Okay. Now was the drug treatment program handled here in
13 Oklahoma or was that handled in Ohio?

14 A. In Ohio.

15 Q. And subsequently did he participate in that and complete
16 it?

17 A. He participated in an inpatient drug treatment program in
18 the state of Ohio and was discharged from that facility.

19 Q. He was discharged from that. Was he also required, as you
20 mentioned, to submit to periodic urinalysis in the State of
21 Ohio?

22 A. Yes, he was.

23 Q. And what was the purpose of the urinalysis?

24 A. To detect whether or not the defendant had reverted back
25 to the use of illicit drugs.

1 Q. All right. And was there any positive analysis of any of
2 his urinalysis indicating that he had substance abuse in his
3 system?

4 A. Numerous tests all positive for marijuana.

5 Q. Can you tell us the dates of those?

6 A. Yes, urine samples were taken on December 3rd, 6th, 13th,
7 20th, 27th and 31st of 1991, as well as January 3rd, 10th,
8 13th, 17th, 21st -- 21st and 24th of 1992; tests taken
9 February 7th, 14th, on the 21st of 1992; tests administered on
10 March 3rd, 5th, 10th and March 24th of 1992 , all returned
11 positive for THC.

12 Q. Were there any other drug detected besides THC?

13 A. Not on those dates.

14 Q. Was there any indication that any of his urinalysis
15 submitted were positive for Benzodiazepines?

16 A. There were earlier tests run in May of '91, I believe,
17 that came back positive for other substances. Those test
18 results resulted in a petition directed to this Court in which
19 the Court modified conditions of probation to require Mr.
20 Ladd's participation in an in-house drug treatment program, and
21 he did and was discharged as I mentioned earlier.

22 Q. Okay. So those were before the treatment?

23 A. Correct. Those are not the subject of the current
24 allegation. Those were dealt with by modification by this
25 Court.

1 Q. Does that include also the cocaine and morphine analysis
2 also?

3 A. Yes, sir, that's correct.

4 Q. And those not being the basis for this particular petition
5 then, you are going simply on the THC analysis that you have
6 reported the dates of there in that paragraph?

7 A. That's correct.

8 Q. Have you subsequently had any conversations with Mr. Ladd
9 concerning these analysis, you yourself?

10 A. No, I have not spoken to Mr. Ladd -- we've spoken very
11 briefly but I have not talked to him concerning these
12 allegations.

13 Q. All right. Have you had any conversations with the U.S.
14 Probation Officer in the Northern District of Ohio who was
15 supervising him?

16 A. Yes.

17 Q. Has there been any recommendations made?

18 A. Relative to the instant allegation?

19 Q. Right.

20 A. Yes. The recommendation of the probation office in Ohio
21 is that the probationary sentence Mr. Ladd is now serving be
22 revoked.

23 Q. All right. And do you join in that?

24 A. It's my recommendation that the Court take action
25 concerning these violations as they are very serious

1 violations, yes.

2 Q. And do you have a recommendation to make to the Court?

3 A. I have made a recommendation to the Court.

4 MR. MORGAN: I believe that's all.

5 THE COURT: Thank you, Mr. Morgan. You may examine
6 from there.

7 MR. DOWDELL: From here, Judge?

8 THE COURT: Yes.

9 MR. DOWDELL: Thank you.

10 CROSS-EXAMINATION

11 BY MR. DOWDELL:

12 Q. Mr. Kallenberger would some of the test results to which
13 you have referred, the positive test results, would some of
14 those have been obtained after the filing of your initial
15 petition to revoke the probation?

16 A. Okay, there was an initial petition and there was an
17 amended petition.

18 Q. Correct. The initial petition was filed only March 9?

19 A. Right. Yes, the later test results as well as the earlier
20 test results were added to the amended petition.

21 Q. So they were -- those results were disclosed in your
22 petition on March 9th; correct?

23 A. True.

24 Q. Were those results, to your knowledge, obtained and
25 disclosed pursuant to the filing of the petition after the

1 issuance of the summons for Mr. Ladd?

2 A. You'll have to help me on the date --

3 Q. March 9?

4 A. March 9.

5 Q. Yes.

6 A. The amended petition is dated April 7, 1992.

7 Q. The initial petition was March 9th and the summons was
8 issued immediately thereafter?

9 A. Okay.

10 Q. So some of the results you have testified to, the positive
11 test results for marijuana were disclosed in the petition;
12 correct -- or all of them were disclosed in the petition?

13 A. They have all been disclosed in the amended petition.

14 Q. All right. And some of those positive test results
15 occurred after March 9th?

16 A. Correct.

17 Q. The date of the filing of the initial petition?

18 A. I believe they go through March 24th.

19 MR. DOWDELL: Thank you, no further questions, Judge.

20 THE COURT: Thank you.

21 MR. MORGAN: I just have one question. Perhaps I
22 overlooked it.

23 REDIRECT EXAMINATION

24 BY MR. MORGAN:

25 Q. You have indicated that they tested positive for THC. Can

1 you explain for us laymen what that means?

2 A. That would indicate that the defendant has smoked
3 marijuana.

4 MR. MORGAN: Thank you.

5 THE COURT: Thank you. Thank you very much, Mr.
6 Kallenberger. Anything further?

7 MR. MORGAN: No, that's all I have, Your Honor.

8 THE COURT: Thank you, Mr. Morgan.

9 MR. MORGAN: Yes, sir.

10 MR. DOWDELL: The defense would call Dr. Samuel J.
11 Sherman.

12 THE COURT: Very well. Doctor, if you would please
13 come forward and be sworn.

14 SAMUEL J. SHERMAN

15 Called as a witness on behalf of the defendant, being first
16 duly sworn, testified as follows:

17 THE COURT: You may examine.

18 MR. DOWDELL: Thank you, Judge

19 DIRECT EXAMINATION

20 BY MR. DOWDELL:

21 Q. Could you state your complete name please?

22 A. Samuel J. Sherman.

23 Q. How old are you?

24 A. Forty-five.

25 Q. What is your profession?

1 A. I'm a clinical psychologist.

2 Q. Are you currently employed?

3 A. Yes.

4 Q. Could you tell the Court where?

5 A. I'm employed at the Children's Medical Center and then I
6 also have a small part-time practice.

7 Q. And is your employment at the Children's Medical Center as
8 a clinical psychologist?

9 A. Yes, sir.

10 Q. Could you tell the Court please, Dr. Sherman, what your
11 educational background is beginning with your undergraduate
12 school?

13 A. I have Bachelor's Degree --

14 MR. MORGAN: I'll stipulate.

15 MR. DOWDELL: It will be very brief. I think it will
16 be of assistance to the Court?

17 A. I have a Bachelor's Degree in Psychology from Rutgers
18 which I received in 1969 in psychology. A Master's Degree in
19 Applied Psychology which I received in 1971 from the Virginia
20 Commonwealth University. A Ph.D. in Developmental Psychology
21 which I received in 1975 from the University of North
22 Carolina. An equivalent Ph.D. in Clinical Psychology which I
23 received in 1978 from Case Western Reserve University; and I
24 did my clinical internship in clinical psychology from 1977 to
25 1978 at the University of Texas Medical Branch in Galveston.

1 Q. Do you hold any faculty positions?

2 A. I'm clinical instructor on the faculty of the University
3 of Oklahoma Health Sciences Center in Tulsa.

4 Q. At this time?

5 A. Yes.

6 Q. For how long?

7 A. Approximately since 1986.

8 Q. How long have you been employed at the Children's Medical
9 Center?

10 A. Four years this month.

11 Q. Prior to that, Dr. Sherman, what was your employment?

12 A. I worked at Eastern State Hospital in Vinita for two years
13 doing primarily -- as a psychologist doing primarily forensic
14 examinations, most of which were determinations of criminal
15 competency to stand trial.

16 Q. Have you testified as an expert before?

17 A. Yes.

18 Q. On how many occasions approximately?

19 A. Somewhere between three dozen and 50.

20 Q. Have you ever testified in federal court?

21 A. Yes.

22 Q. Have you testified before this Court?

23 A. Yes.

24 Q. Have you performed professional services on behalf of the
25 United States Probation Department?

1 A. Yes, for approximately two years, I believe.

2 Q. Could you explain for the Court the nature of those
3 services?

4 A. Generally these are offenders who are either pretrial or
5 have already been sentenced, and generally speaking I provide
6 individual psychotherapy services for them.

7 Q. In the course of those services have you worked with Mr.
8 Kallenberger?

9 A. I have worked with Mr. Kallenberger and Mr. Boston as
10 well.

11 Q. Have you had an opportunity, Dr. Sherman, to familiarize
12 yourself with David Ladd?

13 A. Yes, sir.

14 Q. And have you had an opportunity to familiarize yourself
15 with the issues that are presented by this hearing?

16 A. Yes.

17 Q. Have you reviewed any pleadings in the case?

18 A. Yes.

19 Q. Could you tell me which pleadings you have reviewed?

20 A. The pleadings at his initial sentencing, I believe.

21 Q. Would that include his indictment?

22 A. Yes.

23 Q. And the plea agreement?

24 A. Yes, sir.

25 Q. The substantial assistance motion filed by the government?

1 A. Yes, sir.

2 Q. The judgment and sentence entered by the Court?

3 A. Yes.

4 Q. And the government's revocation papers, the initial
5 petition filed on March 9th and the amended petition filed on
6 April 20th?

7 A. Yes.

8 Q. Aside from the pleadings, have you reviewed any other
9 papers relating in any way to Mr. Ladd?

10 A. Yes, I have reviewed the summaries of his substance abuse
11 treatment which were provided to me by you. I believe they are
12 from Glenbeigh Hospital in Cleveland and the Donofrio facility
13 in Youngstown, Ohio.

14 Q. Did those papers include written evaluations of Mr. Ladd's
15 psychological condition?

16 A. Yes, in a general sense.

17 Q. And written findings?

18 A. Yes.

19 Q. Have you met with Mr. Ladd?

20 A. Yes, on several -- three occasions.

21 MR. DOWDELL: Your Honor, I would offer Dr. Sherman to
22 the Court as an expert of clinical psychology for purposes of
23 this hearing.

24 THE COURT: Any objection?

25 MR. MORGAN: No objection.

1 THE COURT: Very well, the Court does recognize Dr.
2 Sherman as an expert in the field in which he is offered as an
3 expert and he may give opinion testimony in that field.

4 MR. DOWDELL: Thank you, Judge.

5 Q. (By Mr. Dowdell) Dr. Sherman, in connection with your
6 examination of Mr. Ladd, was he subjected to any written or
7 objective tests of any type?

8 A. Yes, two tests.

9 Q. What were those?

10 A. The Minnesota Multiphasic Personality Inventory II and
11 Millon Clinical Multiaxial Inventory II.

12 Q. Could you explain briefly what the nature of these tests
13 are and what they are designed to establish?

14 A. Yes, they are called objective personality tests and both
15 of these tests consists of a number of true or false
16 questions. I believe the Milan has 175 true false questions
17 and the Minnesota has 567. And they are designed to test the
18 respondent's pattern of answering against those of known
19 clinical populations.

20 Q. Are these tests widely used?

21 A. Yes.

22 Q. And widely recognized?

23 A. Yes, they are probably the two most often tests of
24 objective personality that are used on adults.

25 Q. What did the tests indicate with respect to David Ladd?

1 A. Primarily they indicated in both cases, the case of both
2 tests that is he has a problem with substance abuse. In other
3 words, his responses were similar to those of the responses of
4 persons who are known to have substance abuse disorders.

5 Q. Are the tests equipped to indicate tendencies toward
6 antisocial behavior or violence?

7 A. Yes, sir.

8 Q. Was there any indication in the test suggesting that Mr.
9 Ladd may be a danger to the community or antisocial conduct may
10 be --

11 A. No.

12 Q. -- something to be expected?

13 A. No, there was not.

14 Q. In your interviews of Mr. Ladd, were the results of the
15 interviews consistent with the results of the objective written
16 tests?

17 A. Yes.

18 Q. Is there anything that you learned from the interview
19 process that was significant to your conclusions?

20 A. Several things.

21 Q. Could you detail those please?

22 A. Sure. For one thing I had learned -- and this was not
23 provided to me in the information that I received in any other
24 form -- that Mr. Ladd has a positive family history for
25 substance abuse, in particular alcoholism. I believe that his

1 late father was a practicing alcoholic on the basis of what
2 David told me his father's use pattern was. I learned his wife
3 also is a practicing substance abuser. I learned that Mr. Ladd
4 to my knowledge has abused substances since the age of seven,
5 and I believe he's now 33, and this is on an almost continuous
6 basis, my best guess would be other than the time that he was
7 hospitalized in Ohio for 90 or 95 days. And I think the thing
8 that struck me the strongest as a clinician was the level of
9 denial of use of this man. And for those of us who are
10 involved in treatment of substance use, denial is a fairly
11 common process in a substance abuser, but I don't know that I
12 had ever seen quite so strong a level of denial as in Mr. Ladd.

13 Q. Could you explain what you mean by denial?

14 A. Mr. Ladd more or less maintains that he doesn't have a
15 problem with the abuse of substances. That was true despite
16 his treatment, despite his conviction and sentencing on these
17 charges, especially with his agreement at the sentencing
18 hearing that he would not abuse substances. To this day, in
19 fact as late as probably noon this afternoon when I asked him
20 about his father's substance use, this is a man who is
21 described by David as drinking two tumblers full of scotch a
22 night and then falling asleep in his rocking chair on every
23 night. There's some question in David's mind as to whether or
24 not his father was an alcoholic.

25 Q. I would like to put this denial in perspective. In your

1 experience in your profession, could you characterize the
2 degree of Mr. Ladd's condition when compared to others you may
3 treat?

4 A. With respect to the substance use itself, I personally
5 don't believe that I've ever seen a case that is quite as
6 severe as this where it's been ongoing for as many years, the
7 person is as young as David is, and in his case based on the
8 information that I was provided, there are obvious medical
9 problems as well. He received some number of volts of electric
10 shock in, I believe it was late 1980s, which puts him at risk
11 to seizures. He's approximately somewhere between 80 and 100
12 pounds overweight and I believe he's taking some kind of heart
13 medication at this time, and all of these things put his health
14 in jeopardy. The continued use of substances puts it in even
15 further jeopardy. So in terms of health problems, in terms of
16 his age and the number of years of continuous use of a number
17 of substances, including psychedelics, heroin, methamphetamine,
18 cocaine, marijuana and alcohol, to me this is quite severe. In
19 addition, given the fact that he's facing a long-term of
20 incarceration and he's still unable to stop, I think that just
21 speaks to the character and quality of the disorder in his
22 situation.

23 Q. In your business do you meet with substance abusers on a
24 frequent basis so that the Court could get an idea if David
25 Ladd's condition is the most severe you've ever seen? I would

1 like to get an idea of how frequently you meet with abusers?

2 A. I would say on a weekly, somewhere in between weekly and
3 daily basis.

4 Q. For the past--

5 A. I would say possibly since the mid 1980s.

6 Q. Is it significant, Dr. Sherman, that David Ladd
7 continued, allegedly, to utilize marijuana after the initial
8 petition was filed in this court to revoke his probation, is
9 that fact significant to you for any reason?

10 A. Oh, I believe so.

11 Q. Could you explain?

12 A. Well, I think it puts his liberty at risk. At least at an
13 intellectual level, if not at an emotional level, Mr. Ladd was
14 aware of the fact that if he abused any substance that his
15 liberty could be taken away from him. And I'm not an expert in
16 the law, but I'm assuming that the initial sentence could be
17 imposed, or at least the possible maximum.

18 Q. After examining all of this data and interviewing Mr.
19 Ladd, do you have an opinion as to what David Ladd's condition
20 is?

21 A. Yes.

22 Q. What is that?

23 A. I believe that he is a chronic polysubstance abuser.

24 Q. Would it be accurate to say he's addicted?

25 A. Yes.

1 Q. To anything in particular?

2 A. No, I don't believe that David is addicted to any one
3 drug. I think that at least if he is anywhere near an accurate
4 historian, that the manner in which he abused the drugs
5 indicates to me that they were at least interchangeable. In
6 other words, if he couldn't get a certain type of drug he would
7 just substitute another one. As I'm understanding it, what he
8 was initially treated for, according to David, was alcoholism,
9 and that's just one of a number of at least a half dozen drugs
10 that he's abused over the course of the years.

11 Q. I want to go back to where you were explaining facts that
12 you uncovered in your interviews with Mr. Ladd that were not
13 disclosed in the findings provided to you from Glenbeigh and
14 Donofrio. And you related the history of substance abuse of
15 his father or alcohol abuse of his father and wife's
16 condition. Was there another event that you learned in your
17 interviews that occurred when Mr. Ladd was a young man?

18 A. Yes, in going through the reports, I believe that they
19 were from the Glenbeigh facility that there was something in
20 there about David having been intoxicated when he was 9 years
21 old and operating some farm equipment and another person of
22 similar age was crushed or run over resulting in their death
23 when David was operating the machinery.

24 Q. And was David inebriated at the time?

25 A. Yes.

1 Q. Dr. Sherman, do you have an opinion as to what treatment
2 at this juncture might best serve the condition of David Ladd?

3 A. Yes, I believe that David needs to undergo treatment for
4 substance abuse.

5 Q. Now, he's undergone treatment in the past as you know?

6 A. Right. And what I might add is that that is in my
7 experience not uncommon for people who are substance abusers,
8 particularly for people who are addicted to the degree that he
9 is. I do think that it ought to occur someplace away from his
10 home.

11 Q. Why is that?

12 A. I think it's clear, again as late as noontime, that his
13 peer group and his group of friends are users. It's also clear
14 to me that his wife is a substance abuser, and in the parlance
15 of chemical dependency language, she's also what is called an
16 enabler, which simply means a person who facilitates the drug
17 abuser or alcoholic's drug using, alcohol using, drug or
18 alcohol seeking behavior. And as late as the last time that I
19 had interviewed David prior to this morning he stated that when
20 he talked with his wife about the drug abuse problem and the
21 charges, I was told that she had said to him that this was his
22 problem, quote. In other words, I took that to mean it was not
23 hers.

24 Q. Given these facts, are there any particular conditions
25 that you think, in connection with some rehabilitation, that

1 might facilitate a better result?

2 A. I think that the program or a program that would involve
3 treatment of Mr. Ladd would have to be one that's extremely
4 confrontational. In other words, one that would have to
5 provide some people that were more or less in his face, and I
6 think that would also mean a slightly more, a slightly higher
7 degree of active participation by the Department of Probation
8 in terms of getting with him. Now, I must say that I'm not
9 totally familiar with what went on in Ohio.

10 Q. Are there programs, specific programs that you have in
11 mind that might be more confrontational than those to which he
12 has been subjected in Ohio?

13 A. Yes, I think there's a 12 and 12 program here and there's
14 also the H.O.W. Foundation here in Tulsa as well.

15 Q. Is it your opinion, Dr. Sherman, that David Ladd can be
16 helped?

17 A. I think he can be helped, yes. I am not certain as to
18 whether or not he will be helped, and I guess my greatest
19 concern at this point in his situation is the level of denial
20 on his part.

21 Q. Given that this is something that began 25 years ago, is
22 it fair to say it would be a difficult cycle to break?

23 A. Oh, absolutely.

24 MR. DOWDELL: I have nothing further, Your Honor.

25 THE COURT: Thank you very much. Any questions, Mr.

1 Morgan?

2 MR. MORGAN: Just one or two, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. MORGAN:

5 Q. Dr. Sherman, I am Jack Morgan, I'm the assistant U.S.
6 Attorney that handled the indictment and the investigation of
7 this particular case so I have a little background information
8 concerning it, too. You are familiar with the fact that the
9 indictment involved methamphetamine, aren't you?

10 A. Yes.

11 Q. Are you also familiar with the fact that this
12 methamphetamine was manufactured for sale and for profit?

13 A. I was aware of that.

14 Q. Okay. And you also were aware of the fact that Mr. Ladd
15 was involved with the family that was the principal
16 manufacturers, that he was involved in it for greed and for
17 profit?

18 MR. DOWDELL: Your Honor, I would object to this line
19 of questioning given that we're not really here to determine
20 Mr. Ladd's guilt or innocence. He pled guilty and really what
21 we are focusing on are the peculiar conditions relevant to the
22 revocation of probation.

23 THE COURT: Right, I appreciate that. Mr. Morgan is
24 simply trying to see if Dr. Sherman is aware of the underlying
25 offense and whether or not that would affect his opinion.

1 MR. MORGAN: Thank you.

2 Q. (By Mr. Morgan) My point being, and I'll get to it, he
3 committed a federal felony in order to obtain a profit. Now
4 obtaining of this profit, no doubt, had some benefit to him
5 either in the form of being able to purchase worldly goods or
6 being able to purchase drugs that he was somewhat addicted to
7 at that particular time. Do you get a sociological connection
8 between the fact that his addiction has caused him to violate
9 federal law, thereby satisfying himself in order to get money
10 in order to keep on facilitating his addiction or his abuse of
11 drugs?

12 A. I am not sure, you know, that I could answer the -- I'm
13 not sure of the total scope of your question. I guess what I'm
14 looking at is what his current behavior is.

15 Q. I know, but there's a lot of gaps in here that I think for
16 the Court's benefit we need to try to fill in, and you may not
17 be qualified to even answer them. But what assurance to do we
18 have, based on your knowledge, that Mr. Ladd will not go out
19 and violate another federal law in order to keep on getting
20 drugs in order to satisfy his addiction?

21 A. From this point in time on?

22 Q. Right?

23 A. From this point in time on?

24 Q. Right.

25 A. Well, let me see if I can put this more concisely, bluntly

1 and directly. If what you say were to be true in the future, I
2 believe -- I believe that at that point Mr. Ladd would need to
3 go back and to be resentenced on the original charge as well as
4 tried on whatever charges would bring that to your attention.
5 I guess what I'm talking about is treatment and I guess my
6 thought is if he doesn't respond to treatment then the
7 alternative to that would be incarceration.

8 Q. Okay. You are aware that the Court must take into
9 consideration not only the needs of Mr. Ladd but also the needs
10 of society?

11 A. Yes, sir.

12 Q. Okay. Is he a danger to society or has he been in the
13 past?

14 A. I do not believe that at this point he's a danger to
15 society.

16 Q. Have you ever seen him under the influence of drugs?

17 A. Not to my knowledge.

18 Q. Has he operated motor vehicles under the influence of
19 drugs?

20 A. I am not certain.

21 Q. Does he have a job?

22 A. I do not believe that he has a job at this point.

23 Q. Do you have the degree of frequency that he abuses drugs?

24 A. I can't speak to the degree of frequency that he's abused
25 drugs in particular. It's my opinion that he has continuously

1 abused these drugs for a period of 25, 27 years, other than the
2 time for which he received treatment. I would say that that's
3 a pretty good estimate.

4 Q. But you have no knowledge whether he's a weekly abuser
5 by-weekly, monthly?

6 A. Oh, my statement I thought, you know, it was explicit but
7 maybe it was just implicit. I would make this very clear.
8 It's my opinion that Mr. Ladd has probably abused drugs on a
9 daily basis. In other words, if he was unable to find one he
10 would find another.

11 Q. You are including alcohol in that, of course?

12 A. Oh, yes, sir.

13 Q. Excluding alcohol where does he get his drugs, do you know
14 that?

15 A. I can't answer that. I don't know.

16 Q. Are you aware of the fact that the obtaining of drugs is
17 illegal?

18 A. Yes, sir.

19 Q. You indicated that he continues to abuse drugs even after
20 sentencing and used this particular case as an example that he
21 wasn't able to quit. Does that reflect that he has no respect
22 for the Court system?

23 A. I choose not to see it that way. I believe that this is
24 associated with the disorder from which he suffers. I believe
25 that given my testimony that this qualifies under the term

1 clinical denial.

2 Q. By denial, you are saying that he denies that he has a
3 substance abuse problem, right?

4 A. That's correct.

5 Q. But that doesn't negative the point that you have
6 concluded that he does have a substance abuse problem, right?

7 A. That's correct also.

8 Q. So if you have the opinion he has a substance abuse
9 problem, is this in direct defiance of the Court order or can
10 you explain why he continues to defy the Court order, the rules
11 of probation?

12 A. I believe that there isn't any question in my mind, given
13 my experience with a population substance abusers, that this is
14 related to his disorder. I don't believe that he's going out
15 and actively trying to defy the Court, nor do I suggest to you
16 that he's attempting to comply with the court rules. I think
17 that his need for an altered state of consciousness is so
18 great, given his addictions, that this is why he has done what
19 he has done.

20 Q. That makes him a sociopath, doesn't it?

21 A. Well, I think it all depends on one's definition.

22 Q. What is your definition of a sociopath?

23 A. I guess my definition of a sociopath would be one who is
24 irresponsible and does not take into account the welfare of
25 society in general and violates the rights of others on a

1 continual basis.

2 Q. Does Mr. Ladd fit that category?

3 A. I think he fits part of it. I think he's also basically
4 done a real good job of destroying almost half his life and my
5 guess is that his life expectancy isn't all that great given
6 his medical problems.

7 Q. Can you give the Court an insight as to his medical
8 problems, his physical problems?

9 A. Well, I believe that I already have. I think that one can
10 tell by looking at him that he's grossly overweight. I would
11 categorize him as obese. I believe the information that I read
12 about him in the material that I was provided said that he was
13 80 to 100 pounds overweight. I read his brief letter from his
14 neurologist in Dallas such that he has brain damage and is
15 subject to seizures.

16 Q. Did you mention heart medication?

17 A. I believe so.

18 Q. Is that connected to his weight problem or do you have a
19 specific diagnosis concerning his heart?

20 A. He did not give me one.

21 Q. What do you have concerning a heart condition?

22 A. I can only tell you the medicine that he told me he was
23 taking.

24 Q. You haven't talked to any doctors who are treating him?

25 A. No.

1 Q. Any diagnosis or prognosis as far as his heart condition
2 is concerned?

3 A. No, sir.

4 Q. And what medicine did he tell you he was taking?

5 A. I'm not certain. I thought it was Procardia but I'm not
6 sure.

7 Q. Is there anything that indicates that his heart condition
8 is severe or serious?

9 A. I can't speak to that question directly. I can only say
10 by inference that I would think that if a doctor prescribed
11 medicine for someone's heart that it would be serious. I would
12 also say by inference that someone who is 80 to 100 pounds
13 overweight and has a seizure disorder is not in good health.

14 Q. Doesn't the substance abuse also contribute to the health
15 and the heart condition of the patient?

16 A. Yes, sir.

17 Q. Doctor, what makes you think that a treatment for
18 substance abuse away from home, a program would be any more
19 beneficial to him than the ones he's already gone through?

20 A. I think it would put additional pressure on him and
21 isolate him from his peer group and his wife.

22 Q. And that's the only basis for it?

23 A. I think there's a possibility that it would be more
24 confrontational.

25 Q. And you also recognize that incarceration in a federal

1 correctional institution would likewise take him away from his
2 peer group and also from his wife, too?

3 A. That's correct.

4 MR. MORGAN: I believe that's all.

5 THE COURT: Any further questions?

6 MR. DOWDELL: Nothing further, Judge.

7 THE COURT: Thank you, Dr. Sherman. Anything
8 further?

9 MR. DOWDELL: No further witnesses on behalf of Mr.
10 Ladd.

11 THE COURT: Very well. Anything that the United
12 States would like to say at this point?

13 MR. MORGAN: No, I'll waive and wait for Mr. Dowdell
14 and respond to his remarks, Your Honor.

15 THE COURT: Mr. Dowdell.

16 MR. DOWDELL: Judge, there are two central concerns, I
17 think, to determination of revocation of probation. One is the
18 safety of the community, something that the Court has been
19 through at the sentencing phase; and the second is whether or
20 not the probationer can be rehabilitated. I think that the
21 issue of safety to the community is frankly not something that
22 the Court should be concerned about. It's something, as I
23 mentioned, that the Court passed upon before and really nothing
24 has changed since his sentencing and today with respect to
25 that. That conclusion is confirmed by the testimony of Dr.

1 Sherman and it's confirmed by the objective tests which Dr.
2 Sherman gave to Mr. Ladd which indicate that he has no tendency
3 to commit any antisocial behavior or be a danger to the
4 community in any way. And I don't think, although we can go
5 over if we want the inherent evils in a conspiracy to
6 manufacture and distribute methamphetamine, I don't think the
7 government has produced anything to the contrary with respect
8 to David Ladd and whether or not he is in fact a danger to the
9 community.

10 As to rehabilitation, which is I think really the
11 focal point of this hearing, I think it is fair to say that the
12 efforts of the government -- and I think that they have been
13 good faith efforts to rehabilitate or provide Mr. Ladd with
14 some professional services by which he had might extricate
15 himself from his cycle of substance abuse -- have not proved
16 successful. They for whatever reason they have not been
17 enough. Dr. Sherman has testified that in his experience it is
18 not unusual for someone to have to return, someone in Mr.
19 Ladd's shoes, for someone to have to return to that type of
20 service again and again. And he's also testified that this is
21 an extreme case. In his years of experience that this was the
22 most severe case that he had ever experienced, and I think that
23 is extraordinary. What we have here is someone who for 25
24 years, since he was a 7 year old child, has in some form or
25 another self-medicated himself. And I think that it would not

1 be appropriate for the Court to adopt what is I think obviously
2 the government's position, which is he had treatment in Ohio
3 and he violated the terms of probation, apparently, and that's
4 it , we revoke the probation. I don't think that it can be so
5 rigidly applied and I don't think that the peculiar
6 circumstances of this case warrant that type of rigid
7 application of the revocation of probation rules.

8 I don't think, Judge, that it would serve either the
9 interest of David Ladd or the criminal justice system to merely
10 find that these alleged violations of his terms of probation
11 occurred, and the reaction to that to be to revoke his
12 probation. I think that we have to ask why this has happened,
13 and I think the testimony of Dr. Sherman leads us to a very
14 logical conclusion which is that this person is ill and that
15 this person is in a cycle of abuse that has gone on for a long,
16 long time and it may take more to address that.

17 Dr. Sherman has learned things about David Ladd's past
18 that were never learned in the 90-day treatment that he
19 received in Ohio or the 5-day treatment that he received in
20 Ohio. And I think that they are fundamental things, they are
21 basic things about his family history and his environment
22 growing up, and his wife and her substance abuse problem, which
23 is something that I think ultimately would have to be addressed
24 as well if David Ladd is to truly be rehabilitated.

25 I think that this case is not unlike one of the cases

1 that we cited to the Court in our memorandum which is the
2 Bearden vs. Georgia, it's a case in 1983, where Justice
3 O'Connor reversed a probation revocation where the defendant ,
4 the probationer, Mr. Bearden, had as a condition of his
5 probation been required to make restitution to the victims of
6 his crime. They were the victims of a burglary. Soon after
7 his sentence was imposed Mr. Bearden lost his job, was unable
8 to gain employment, and that was in part attributable to the
9 fact that he was on probation for a federal conviction, which
10 is the situation that Mr. Ladd finds himself in. And Justice
11 O'Connor concluded that there was a lack of fault on the
12 probationer's part for his inability to comply with the
13 conditions of parole. Now, there is a bit of leap between that
14 and Mr. Ladd's situation, but I think the rationale still
15 applies. There is -- though this may not be popular today in
16 these social times -- there is a certain lack of control in Mr.
17 Ladd's situation, what he can do. I think a great example of
18 that is the fact that knowing that his liberty was at jeopardy,
19 knowing that the probation department was regularly conducting
20 urinalysis examinations, knowing that he had failed those,
21 knowing long before the filing of the petition, knowing that
22 the petition had been filed he continued to fail. In respect
23 of Mr. Morgan's position about disrespect for the Court, I
24 don't think it can be trivialized like that. I think it's more
25 accurate to say that this is someone that has a loss of control

1 about where their life is headed. Knowing all of this -- he's
2 a father of two children, he has a wife he is currently
3 unemployed but he's working on occasion -- and knowing all of
4 that he was unable to do what he knew he had to do. And I
5 think that the Bearden case is an interesting analogy to this
6 case in that there is some degree of lack of fault, there is
7 some degree of good faith on Mr. Ladd's part. There was a good
8 period of time, Judge, following your imposition of sentence
9 where there were no failed urinalysis, where Mr. Ladd was
10 working, and it was only a period of weeks after he lost his
11 job late in 1991 when that began to change. And there is a
12 home life situation that would need to be addressed, there is a
13 history of abuse that needs to be addressed, but Dr. Sherman's
14 testimony is that it can be addressed, and I think under those
15 circumstances that we should give it every since that we can.

16 In sum, Judge, I would say that the guidelines should
17 not be so rigidly applied that the entire situation cannot be
18 examined by the Court. And the entire situation here includes
19 the fact that David Ladd has commenced this life-style when he
20 was a 7 year old boy; that we have expert testimony that in his
21 experience as a clinical psychologist who on a weekly basis
22 deals with people who have this or this type of problem, he has
23 never seen a case that is more severe. And given that
24 situation, I think that we may be called upon to try it again.
25 I do not question that the government has done within the

1 probation department everything that it is equipped to do,
2 which makes this an unusual situation. I do question whether
3 having done that, and there being then alleged violations of
4 the condition of probation, our reaction to that should be that
5 we revoke probation. I think that this being the system of
6 laws which are wise constraints, I think the wise, and in my
7 view the better approach to this situation is to attempt to
8 help David Ladd once again, which is to not turn our backs on
9 him but to subject him to a more confrontational, in the terms
10 of Dr. Sherman, treatment and try to reverse this cycle which
11 is going to admittedly be very difficult to reverse.

12 Thank you, Judge.

13 THE COURT: Thank you. Mr. Morgan, anything finally
14 you would like to say?

15 MR. MORGAN: Your Honor, I'm familiar with Bearden vs.
16 Georgia and that was a debtors' prison type of an argument that
17 had been had been made in the United States Supreme Court that
18 he wasn't able to make his restitution and he was put in jail
19 because he was financially unable to make these payments, and
20 that was one of the considerations that the Supreme Court took
21 in, the fact that he was unable to help himself under these
22 circumstances of substance abuse, therefore because he couldn't
23 make the payments he shouldn't necessarily be put in prison
24 debtors' prison because of his inability to pay it. But I'm
25 sure you have heard these arguments many times before. It's

1 always somebody else's fault other than the defendant's. This
2 time it's probation office's fault not going that extra step,
3 for not doing everything they could. It's the government's
4 fault for not giving him sufficient and adequate treatment, to
5 make sure that he is watched, treated, controlled and processed
6 in a social situation where he can then become then a member of
7 society. I get lost sometimes in what is the responsibility of
8 the defendant to the court system? What is the responsibility
9 of Mr. Ladd to society? What obligation does he have? He had
10 the first bite out of the apple. He had the benevolence of the
11 Court gave him five-year system of probation which he was to
12 operate under. He was abide by the rules of probation. He
13 signed those rules, acknowledged what those rules were, and now
14 we're told that he is so deeply involved with drugs that he
15 can't quit using them, and because he can't quit using them
16 we're supposed to give him another bite out of the apple,
17 another chance, another treatment. What do you tell the next
18 case that comes in that has violated the rules of probation?
19 What do you tell everybody that's put on probation? Do you
20 tell them that, well, you don't really have to obey the rules
21 of probation because if you violate them we're going to give
22 you another chance, and if you violate them we may give you
23 another chance? How long does court system string out
24 antisocial behavior in recognition of direct defiance of a
25 court order? Even the doctor admitted that he was a

1 sociopath. He is unable to conform to the rules and
2 regulations of society. Now, this is something that he has to
3 assume the responsibility for, and if Scott Kallenberger or Bob
4 Boston have told his and walk him around the rest of his
5 probationary period in order to ensure that he is a productive
6 member of society, what happens when those five years are up?
7 If we don't make an impression on him at this point, remove him
8 from the peer group that he's running with and -- you know,
9 Pretty Boy Floyd ran with a peer group, too, which got him in
10 trouble. David Ladd evidently runs with a peer group that gets
11 him in trouble. If he must be removed from the peer group, he
12 must be removed enabling wife, then we have a facility for
13 that, a federal correctional institution, and we also have an
14 excellent drug abuse program at many of our federal
15 institutions.

16 I would recommend incarceration. I would recommend
17 that his probation be revoked.

18 THE COURT: Very well. The issue before the Court is
19 what do we do in the justice system with addicts, that's the
20 issue before the Court and it's a very extreme issue. In 13
21 years on this bench I have imposed a variety of sentences in a
22 variety of drug cases. People who have been very active in the
23 distribution of drugs I have sent to the penitentiary for the
24 rest of their natural lives without probation. Mr. Morgan has
25 prosecuted many of those cases. Others who have cooperated

1 with the government have walked because of that cooperation.
2 There is nothing quite as Byzantine as the approach of the
3 justice system to the drug problems of the United States. I
4 fully understand Mr. Morgan's attitude. Mr. Morgan spoke out
5 on behalf of Mr. Ladd initially. If the prosecutor had not
6 filed the motion that had been filed for Mr. Ladd's cooperation
7 he would have had incarceration. So we have to deal with the
8 problem of drugs and I think that we deal with it generally in
9 a way that's unsatisfying. It's almost an unsolvable problem.
10 If we have someone who is a major distributor that's not
11 normally a problem, they go to jail and they go to jail for a
12 long, long time, and that's exactly what should happen. In
13 cases of cooperation they get a break; if it's significant
14 cooperation they get a big break. But what do we do about the
15 addict? That's the real problem. Is incarceration ultimately
16 the answer? And apparently it is ultimately the answer because
17 we are filling our penitentiaries with addicts, and maybe
18 that's the only solution we can have.

19 In this case Mr. Morgan appropriate appropriately
20 points out that Mr. Ladd assisted in the distribution of
21 amphetamines, he worked with a strange group, the Hall family,
22 and I recall each and every sentence in that case. In this
23 instance we have a man who is clearly addicted on a daily
24 basis. Ohio worked with him very carefully. Ohio cooperated,
25 they understood his problem. The probation office really broke

1 their backs in trying to help Mr. Ladd. The reports that came
2 out of all of the evaluations in Ohio said largely what Dr.
3 Sherman said, that his denial is such that the prognosis for
4 recovery is not good. The federal courts always have the
5 option of incarceration as the cure. I think there's no one in
6 this room who feels really that that type of rehabilitation
7 works in a case of gross addiction.

8 So what do we do with David Ladd? Probation has given
9 up on him, the prosecutor has given up on him. And should the
10 Court in an appropriate approach say that Ladd abused the
11 process? He has without a doubt messed up greatly because he's
12 a self-destructive personality, he's an addict. The bottom
13 line of any substance abuser is self-destruction until such
14 time that they begin to understand what their problem is and
15 what causes them the pain. Mr. Ladd may never, may never
16 relieve himself of that problem. But based on everything that
17 I have heard, based on the time that I have been in this slot,
18 I'm going to direct that he be placed in Freedom House, not to
19 exceed nine months, in the most confrontational type of program
20 that they have and that he can work only upon the approval of
21 the probation office and the project director; that he can only
22 have such passes as the probation office approves, not
23 according to any rules or regulations of Freedom House but
24 according to the approval of the probation office. This
25 additional condition is that he successfully complete this

1 program. An additional condition is that he be placed
2 immediately in that facility.

3 I do understand, Mr. Ladd, that the injunction "just
4 say no" does not have any value whatsoever to an addict. But I
5 can tell you this, that this is the final opportunity that you
6 have to work with the people who will try to assist you, and if
7 you do not face the fact that you are an addict and that you
8 have to work diligently to find an answer to this problem, work
9 with people who will help you, if you don't face that, then
10 you'll be here, you'll be back with me, and I will be sending
11 you to some fairly long term in a federal institution where you
12 will have the opportunity to work out our own salvation, if at
13 all without, I believe, much real help, although I do recognize
14 that there are programs in some institutions.

15 It's my sincere hope that I'm not a fool because if I
16 am a fool I will recall that when I again see you, and I assure
17 you that I will be a fool only once in regard to anyone.

18 Is there anything further that we need to --

19 MR. MORGAN: No, Your Honor, I have nothing else.
20 Thank you.

21 THE COURT: Thank you.

22 MR. KALLENBERGER: I do, Your Honor.

23 THE COURT: Yes.

24 MR. KALLENBERGER: Would the Court consider in its
25 order a statement that the defendant can be discharged from the

1 center prior to that nine month period upon approval of the
2 U.S. Probation Office and the program director.

3 THE COURT: Yes, that will be part of the Court's
4 order. Anything further Mr. Dowdell?

5 MR. DOWDELL: Nothing further, Your Honor. Thank you.

6 THE COURT: Thank you. We'll be in recess.

7 Mr. Morgan, would you prepare the order? Would you
8 prepare an order reflecting it?


9 MR. MORGAN: Yes, sir.

10 THE COURT: I appreciate it. Thank you.

11 (Recess).

12
13 A TRUE AND CORRECT TRANSCRIPT.

14
15 CERTIFIED:


16 Glen R. Dorrough
17 United States Court Reporter
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